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December 2, 1999

Via Electronic Transmission and Hand Delivery

Hon. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.; TWA-325
Washington, D.C. 20554

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Re: Reply to AT&T Motion to Strike or Disregard Portions of
the Reply Submissions of Bell Atlantic and the New York
Public Service Commission; CC Docket No. 99-295

Dear Secretary Salas:

Enclosed is an original and six copies of the New York State Public Service Commission's Response and Supporting Affidavit to the AT&T Motion in the above-captioned matter. This response is being served on AT&T by hand delivery and overnight mail, and by first class mail on other parties.

Yours very truly,

Penny Rubin
Managing Attorney

Enclosures

cc: Janice Myles
Policy and Programming Division
Common Carrier Bureau (12 copies)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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DEC - 3 1999

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In the Matter of)
)
Application by New York Telephone)
Company (d/b/a/ Bell Atlantic-New York))
Bell Atlantic Communications, Inc.,)
NYNEX Long Distance Company, and)
Bell Atlantic Global Networks, Inc.,)
For Authorization to Provide In-Region,)
InterLATA Services in New York)

FCC Docket No. 99-295

RESPONSE OF NEW YORK STATE PUBLIC COMMISSION
TO AT&T CORP. MOTION TO STRIKE

On November 11, 1999 a highly regarded telecommunications journal that has regularly covered this proceeding emphasized the importance of the New York Public Service Commission's (NYPSC) well recognized independence as a reason for ascribing significance to the NYPSC's reply comments (Nov. 11, 1999 TeleFOCUS Fax Notes, pp. 1-4). Shortly thereafter, (a) AT&T moved to strike a portion of the NYPSC's reply as procedurally improper, (b) submitted an unauthorized surreply affidavit criticizing the NYPSC affidavit, and (c) suggested that alleged similarities between Bell Atlantic-NY's and NYPSC's positions brought into question the NYPSC's objectivity.

It is not clear whether AT&T's filing was a reaction to TeleFOCUS' commentary or in recognition of the fact that the NYPSC reply comments had refuted the underpinnings of AT&T's position in this case. In either event, it will be clearly demonstrated that AT&T's motion is groundless (Point I) and its surreply affidavit is fraught with error (point II). The NYPSC reply comments were procedurally proper, substantively accurate, and certainly not coordinated with Bell Atlantic-NY or any other party.

POINT I

NYPSC WAS ENTITLED, IF NOT OBLIGATED, TO DEMONSTRATE IN ITS REPLY COMMENTS THAT AT&T'S INITIAL COMMENTS WERE INCORRECT

A. The Purpose Of Reply Briefs Is To Answer Incorrect Assertions in Other Parties' Initial Comments

Section 271(d)(2)(B) of the Telecommunications Act envisions state commissions indicating whether incumbent applicants for long-distance entry have complied with the competitive checklist. The NYPSC comments devoted 163 pages to demonstrating that Bell Atlantic-NY had complied with each checklist item.¹

Rather than provide information that should have been included in our initial comments (as AT&T's motion alleges), the NYPSC reply comments presented data showing the inaccuracy of AT&T's initial comments. The provision of such information in reply comments is certainly appropriate. See, Wokas v. Dresser Industries, Inc., 978 F. Supp 839 (N.D. Ind 1997)[wherein

¹ Indeed, because the comments exceeded the Commission's 100 page limit, NYPSC requested a page limit extension in order to fully present its position.

the court held that parties are not obligated in initial briefs to anticipate the arguments other parties may make in their initial briefs]; FCC Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region-InterLATA Services in Michigan (CC Docket No. 97-137), FCC Rcd. 20543, ¶ 57 (1997) [BOC not obligated to anticipate and address every argument in application].

AT&T's motion to strike is at odds not only with blackletter law on the purpose of reply briefs, but also the FCC's procedural rules for 271 applications, which allow all parties, the relevant state commission and the Department of Justice to reply to arguments other participants have raised. Reply comments in 271 proceedings would serve no purpose if parties could not refute erroneous allegations of other parties.

B. The NYPSC Reply Answered AT&T's Initial Comments

AT&T would have the Commission strike the following portions of the NYPSC reply:

1. Paragraph 10 of the NYPSC November 5th Affidavit and Exhibit 4 (the August 1999 on-time reconciliation);
2. Paragraphs 12-15 of the NYPSC Affidavit and Exhibit 5 (the service outage analysis); and,
3. Portions of paragraph 8 of NYPSC Affidavit regarding "I-Code" scoring for the July 1999 on-time reconciliation.

1. Paragraph 10

Paragraph 10 of the NYPSC November 5th Rubino Affidavit and NYPSC Exhibit 4 concern the results of the NYPSC Staff analysis conducted with respect to Bell Atlantic-NY hot cuts performed for all competitors and for AT&T in August 1999. AT&T asserts that paragraph 10 is improper and, in any event, of limited use because the NYPSC Staff reconciliation continued what AT&T characterizes as "soft" scoring. Its position is incorrect, as a threshold

matter, because AT&T submitted its own August 1999 Bell Atlantic-NY hot cut performance data for FCC review in its Initial Comments², thereby squarely inviting additional detail upon reply. Further, AT&T was on ample notice that the same reconciliation methods would be applied by NYPSC Staff to August 1999 data; indeed, the October 12, 1999 NYPSC Managing Attorney letter included in AT&T's Comments so informs parties.³ Because Bell Atlantic-NY filed its August Carrier-to-Carrier performance reports at the end of September, and because staff had to review the details of 123 orders that were disputed by AT&T, NYPSC Staff was unable to complete its August data reconciliation results before October 19, 1999.⁴ Paragraph 10, therefore, could not have been provided in NYPSC's initial comments, and, in any event, directly responded to AT&T's initial comments.

2. Paragraphs 12-15

While AT&T challenges paragraphs 12-15 (NYPSC Staff's service outage analysis), its Initial Comments directly raised the service outage issue and challenged the NYPSC's Evaluation regarding hot cut performance. The NYPSC Evaluation analyzed both the timeliness and quality of Bell Atlantic-NY loop hot cuts. In particular, in response to potential concerns regarding service disruption problems, we noted a refinement to the metric standards that required Bell Atlantic-NY to measure troubles reported within seven (7) days of installation (so called I-Codes) on a disaggregated basis to specifically show hot cut troubles. The NYPSC

² AT&T Comments, AT&T Meek Aff., ¶¶ 118-120.

³ NYPSC McGowan letter (October 12, 1999), AT&T Comments, Attachment 6 to AT&T Exhibit J (AT&T Meek Aff..)

⁴ The data at issue concerns Bell Atlantic-NY's hot cut performance for the month of August 1999- performance that took place before Bell Atlantic-NY's §271 Application and that is, therefore, incontrovertibly germane to the Commission review under any interpretation of a complete-as-filed policy.

Evaluation indicated that the installation codes adequately captured installation-related service problems, and, taken in conjunction with the hot-cut metrics, gave a complete picture of the quality and timeliness of loop provisioning.⁵ Our Evaluation also responded to CLEC concerns regarding service disruptions by noting that:

"An investigation by NYDPS staff did not yield evidence of wide-spread outages resulting from the hot cut process, indeed, many of the service disruptions reported by competitors were no greater than inconveniences such as static on the line, and were not more and no different from the disruptions Bell Atlantic-NY retail customers experienced."⁶

In its initial comments, AT&T charged that between 8 and 17% of customers lost service during the loop cutover as a result of Bell Atlantic-NY provisioning errors.⁷ Although AT&T had participated in the collaborative discussion that produced the hot cut metrics, its "out-of-service" theory departed somewhat from the approach adopted by the parties and the NYPSC in the Carrier-to-Carrier proceeding.⁸ Because AT&T's outage claims, if true, would have been of serious concern, the NYPSC naturally examined AT&T's assertions. Paragraphs 12-15 of the NYPSC Rubino Affidavit and Exhibit 5 contain the service outage reconciliation results; they are based on data available to all parties and were proffered in direct reply to AT&T's assertions.

⁵ NYPSC Evaluation, pp. 90-91.

⁶ NYPSC Evaluation, p. 90.

⁷ AT&T Comments, p. 32 and Exh. J, AT&T Meek, Aff., ¶ 78.

⁸ In the Carrier-to-Carrier measures, hot cut failures are captured in both the on-time and so called I-Code trouble metrics. AT&T's outage approach is essentially a subset of these metrics.

3. Paragraph 8

AT&T challenges the portions of paragraph 8 of the NYPSC affidavit that discussed the installation trouble or I-Code scoring of Bell Atlantic-NY's hot cuts for July, 1999. Among other things, paragraph 8 made clear that for purposes of the on-time reconciliations, staff did not attempt to determine which party's facilities were responsible for troubles reported after the hot cut provisioning window. Thus, paragraph 8 indicated that Bell Atlantic-NY is only required to report as I-Codes troubles in its network. For the purpose of simplifying the on-time performance reconciliation, however, all troubles regardless of cause would appear as I-Codes in the reconciliation.

Although AT&T does not even allege a basis for striking paragraph 8, it is obviously germane to NYPSC's reply to AT&T's service outage claims. In fact, this portion of the affidavit responds precisely to the criticism by AT&T of the relationship between staff's prior scoring of I-Codes and the service outage reconciliation. Thus, AT&T's erroneous criticism makes clear why it was important for NYPSC to explain in paragraph 8 how the prior I-Code scoring related to staff's service outage analysis.⁹

In sum, the challenged paragraphs (10, 12-15, 8) all respond to AT&T's Initial Comments. They are procedurally proper and certainly should not be stricken.

⁹ AT&T's criticism also loses sight of the fact that the NYPSC reply corrected AT&T's misuse of data made available prior to and discussed in NYPSC's initial comments (AT&T Initial Comments, p. 40, fn. 10).

POINT II

AT&T'S UNAUTHORIZED SURREPLY AFFIDAVIT
SIMPLY COMPOUNDS THE ERRORS AT&T HAS
PREVIOUSLY MADE

As painstakingly demonstrated in the responsive affidavit of Margaret Rubino and its attachments (Att. 1, Exhs. 1-3), the November 22, 1999, AT&T Supplemental Affidavit, which criticized NYPSC reply comments, is fraught with error. For example, while AT&T's November 22nd affidavit at ¶15 states that at no point did anyone from the NYPSC's staff indicate that AT&T had failed to submit necessary information, the attached NYPSC staff affidavit affirms that staff did, in fact, expressly indicate to AT&T that it had failed to provide necessary information. The affidavit also documents that on October 27th staff provided AT&T a further opportunity to file supplemental information. (Attachment 1, Exh. 1, ¶16). Mr. Meek's allegation of no notice is plainly incorrect.

Likewise, Mr. Meek's claim that NYPSC staff ignored in the service outage reconciliation prior determinations that certain orders would be scored as I-Codes demonstrates that Mr. Meek does not understand the reconciliation process. As Ms. Rubino explains in her responsive affidavit, prior reconciliations addressed whether the hot cut was met or missed (i.e., delivered on-time) for metric purposes. The reconciliation was not intended to address Bell Atlantic-NY provisioning errors in relation to customer outages and it did not determine whether Bell Atlantic-NY or AT&T was responsible for I-Codes. (Att. 1, Exh. 1, ¶¶ 10, 20, 21). Therefore, prior I-Code scoring cannot be relied on to determine whether a service outage condition was caused by a Bell Atlantic-NY hot cut provisioning failure. While some orders scored previously as "I-Code" would constitute a service outage due to Bell Atlantic-NY's hot

cut provisioning failures, others are not related to the actual hot cut, or may not be due to Bell Atlantic-NY's network.

Mr. Meek's assertion that staff did not review all available information is, like so much of his affidavit, simply wrong. Staff's service outage reconciliation considered all information provided by Bell Atlantic-NY and AT&T. Indeed, Ms. Rubino's November 5th affidavit states that she reviewed all of the documentation provided by AT&T for those orders in which AT&T claimed that there was a customer outage, including trouble tickets and hot cut logs.¹⁰ Ms. Rubino's responsive affidavit, again, makes clear that staff considered all information submitted in the context of a prior reconciliation in the service outage reconciliation review. (Att. 1, Exh. 1, ¶ 17)

Mr. Meek's conclusion that service outages due to defective outside plant should be attributed to hot cut provisioning failures is absolutely wrong. Defective outside facility problems can only be related to the hot cut if the customer was taken off an Integrated Digital Loop Carrier (IDLC) and placed on alternate facilities. In all other cases the customer has the same outside facilities before and after the hot cut (Att. 1, Exh. 1, ¶ 22).

Rather than recite each and every misstatement of Mr. Meek, we invite the Commission to review the attached affidavit of Ms. Rubino and the attachments thereto. The documents include an order-by-order review of the 96 orders that were the subject of Mr. Meek's sworn statement. It demonstrates that Mr. Meek did not carefully consider, or properly apply, the relevant facts when performing his analysis.

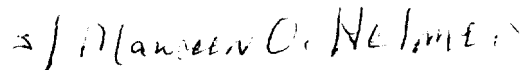
¹⁰ November 5th Rubino Aff., NYPSC Reply, Exh. 2, ¶13.

Ms. Rubino's affidavit confirms that, although some outages do occur as a result of Bell Atlantic-NY failures associated with its hot cut procedures, only between 4-6% of AT&T's orders during the study period involved outages due to Bell Atlantic-NY provisioning failures.¹¹ A careful and unbiased review of the record demonstrates that service outages do not approach the magnitude alleged by AT&T.

CONCLUSION

AT&T's motion should be denied. Inasmuch as AT&T's motion has, however, presented additional, erroneous data, we respectfully request that the Commission accept this filing correcting AT&T's inaccurate statements.

Respectfully submitted



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Chairman



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Of Counsel:

Penny Rubin
Peter McGowan

Dated: December 2, 1999

¹¹ Because each order contains a number of lines, the occurrence of outages, when translated on the basis of lines, would be substantially less than the 4-6%.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Application of New York)	
Telephone Company (d/b/a Bell Atlantic-NY),)	
Bell Atlantic Communications, Inc., NYNEX)	CC Docket No. 99-295
Long Distance, and Bell Atlantic Global)	
Networks, Inc., for Provision of In-Region,)	
InterLATA Services in New York)	
)	
)	

AFFIDAVIT OF MARGARET D. RUBINO
ON BEHALF OF THE
NEW YORK PUBLIC SERVICE COMMISSION
IN RESPONSE TO AT&T MOTION TO STRIKE

Margaret D. Rubino being duly sworn, states as follows:

1. My name is Margaret D. Rubino. My business address is 3 Empire State Plaza, Albany, New York 12223. I am currently a Telecommunications Policy Analyst IV in the Office of Communications of the New York Public Service Commission (NYPSC). I have been a member of the NYPSC's §271 Proceeding evaluation team since late 1996. My primary responsibilities on this team are reviewing and analyzing Bell Atlantic-NY's performance, and resolving disputes between the parties regarding interconnection, collocation, and provision of unbundled network elements.
2. This Affidavit responds to the Supplemental Affidavit of Jack Meek on Behalf of AT&T Corp. submitted November 22, 1999, in support of AT&T's motion to strike certain portions of the NYPSC Evaluation-Reply, certain paragraphs of my supporting affidavit dated November 5, 1999, and Exhibits 4 and 5 to the NYPSC Evaluation-Reply (the AT&T Affidavit).

3. In preparing my affidavit dated November 5, 1999 (the NYPSC Affidavit), I examined orders that AT&T alleged had experienced service problems to determine whether the problems resulted from a BA-NY hot cut provisioning error. The analysis was conducted using documentation provided by AT&T (e.g., AT&T Hot Cut Log and AT&T Trouble Ticket Master Log) and by BA-NY (e.g., BA Hot Cut Checklist, BA-NY Work Force Administration (WFA) Log). I also reviewed Local Service Requests (LSRs), Local Service Request Confirmations (LSRCs), and National Portability Administration Center (NPAC) information. Not all of this documentation was provided for each order. In addition, the quality of information ranged from cryptic to very informative. For example, some documents make only vague references to discussions between AT&T and BA-NY, while others indicate a post-hot cut acceptance call and index number, which is a clear indication that the hot cut worked and was accepted by AT&T.
4. Although the AT&T Affidavit suggests otherwise, reconstructing the events that took place prior to and during these hot cuts is extraordinarily difficult. As the hot cut process itself is largely manual, the documentation of hot cut events necessarily relies on technicians from both companies recording events as they occur. Although the quality of the documentation has generally improved in recent months as all parties gained experience, it remains spotty.
5. In creating the scoring contained in the NYPSC Affidavit, I used the documentation described above to assign orders to three categories: 1) BA-NY provisioning error; 2) Not BA-NY provisioning error and; 3) Questionable. Given the state and quality of documentation, I used my best judgment to determine whether or not BA-NY made a

hot cut provisioning error. In cases where either the quantity or the quality of the documentation provided did not allow me to reasonably make such a judgment, I scored the order as questionable.

6. In response to the AT&T Affidavit, I again reviewed the documentation associated with the 96 AT&T purchase order numbers (PONs) it listed. Based upon this second review, in summary, it is appropriate to change the scoring of 10 PONs and delete one (NYCY9906308) as a duplicate. Appended to this Affidavit are my notes and conclusions for each order at issue. My conclusion is that the scoring changes are as follows:

Changed from “Questionable” to “BA-NY Provisioning Error”	Changed from “Not BA Provisioning Error” to “BA Provisioning Error”	Changed from “Questionable” to “Not BA Provisioning Error”
NYCY9908492	NYCY9908568	NYCY9906365
NYCY9905672	NYCY9905848	NYCY9907170
NYCY9906632	NYCY9906599	NYCY9908006
NYCY9909772		

7. The AT&T Affidavit only addressed orders that I originally scored as either “Not BA-NY Provisioning Error” or “Questionable.” It did not address orders scored as “BA-NY Provisioning Errors.” Due to the time constraint, I re-examined only those orders listed in the AT&T Affidavit, and did not re-examine orders previously scored as “BA-NY Provisioning Errors.” Re-examination of these orders could result in a few reclassifications; therefore this summary of my results is not a complete re-scoring of the entire group of orders.
8. The attachment to the AT&T Affidavit refers to an August 18, 1999 e-mail wherein BA-NY transmitted information about some of the hot cuts in question to AT&T. For a number of these orders, I was unable to make a determination from the facts

provided that BA-NY was at fault for a service outage. In five cases, it appears that BA-NY did in fact agree that an outage was due to a hot cut provisioning failure (PONs NYCY9907336, NYCY9907435, NYCY9907432, NYCY9907789, and NYCY9907709). I did not change my scoring of these orders because my review did not support such a finding. However, if BA-NY has investigated these orders and discovered that it indeed caused a customer outage, BA-NY should have reported these orders as misses in the carrier-to-carrier performance report, and should not have disputed them during the data reconciliation effort. I have requested that BA-NY re-examine the record on these PONs and correct it if necessary to reflect the results of that review.

9. Several mistaken or erroneous statements or assumptions underlie the conclusions in the AT&T Affidavit.
10. At paragraph 7, AT&T states that my outage review did not attempt to determine whether BA provisioning errors actually caused the outages cited by AT&T, and contends that I ignored data showing that customer outages were due to BA-NY provisioning errors. This is incorrect. A fundamental purpose of my outage review was identification of the cause of service problems. Further, AT&T's statement that in a number of cases, "data from the various reconciliations" established that a customer's loss of service was the result of a BA-NY provisioning error or problem is not correct. This outage review was the only review conducted by NYPSC Staff to look at the specific issue of whether an outage or service problem was the result of a BA-NY provisioning error. Therefore, while more than one metric data

reconciliation was conducted, others did not address the cause of the outages and cannot be relied upon as suggested by AT&T.

11. At paragraph 8, AT&T states that I incorrectly attributed outages to retail problems, claiming that the problem would not have occurred if BA-NY had not performed a hot cut. In some cases this is correct; however, it is beside the point. There were two instances in which BA-NY erroneously hot cut more lines than were ordered by a CLEC, but the outages on these lines are, by definition, retail outages.¹ Because the hot cut order itself was performed correctly, the errors did not affect hot cut metric performance and were properly reflected in BA-NY's retail metrics. In other cases, there were non-hot cut-related troubles on lines prior to the hot cut, or troubles that arose after the hot cut. At ¶26, AT&T claims that I incorrectly treated order NYCY9909957 as a "retail problem." In fact, the problem was reported as a hollow sound on the line, and was not related to the hot cut. I did not treat this order as a retail problem. Other examples are explained in detail in the attached notes and conclusions.

12. AT&T, at ¶11, states that the NYPSC Carrier-to-Carrier metric *PR 6-02 - %*

Installation Troubles within 7 Days--Hot Cuts applies:

When a hot cut results in a loop that does not work at cutover but is erroneously accepted by the CLEC as a successful cut

AT&T's statement is misleading. The metric definition in the carrier-to-carrier guidelines contains no such language. And, while cuts "erroneously accepted" by a CLEC may in fact be reported under the Carrier-to-Carrier metrics as I-codes, AT&T

¹ On both NYCY9907665 and NYCY9907739, the customer in question had three lines. In each case, AT&T requested a partial port, ordering only two of the customer's three lines. In each case, BA-NY disconnected all three lines in error, two of which were properly ported to AT&T and one of which resulted

December 1, 1999

is raising this possibility for the first time here. Neither AT&T or any other CLEC has previously suggested that their line testing equipment and procedures are so imprecise as to fail to capture problems. AT&T's new assertion leads to questions regarding the accuracy and adequacy of AT&T line testing procedures. If AT&T's testing is not adequate to identify problems with lines at cutover, it should not be relied upon to determine whether hot cuts were successful or not. The Carrier-to-Carrier metrics contemplate the inability on the part of CLECs to test and accept hot cuts as successful within the one-hour testing window. In these cases, BA-NY closes the order after one hour, but does not receive a CLEC index number confirming a successful cut.

13. At ¶13, AT&T alleges the NYPSC uses "soft scoring." Bullets 1 through 3 of that paragraph, although alleging NYPSC analytical failures, merely track the NYPSC Carrier-to-Carrier metrics as they currently exist and were appropriately applied. The fourth bullet is simply incorrect. Referring to order number NYCY9909338, AT&T alleges that I scored the order as met because it was completed only five minutes late. In fact, my analysis states clearly that the AT&T and BA-NY logs disagreed on the timeliness of the hot cut, with it recorded as five minutes late in the AT&T log, but on time in the BA-NY log.² After review, I accepted BA-NY's representation that this cut was timely.

14. Throughout the data reconciliations, there are examples of hot cuts completed only a few minutes late that I scored as BA-NY misses. For example:

NYCY9908562 (5 minutes late)
NYCY9905241 (7 minutes late)

in a loss of the customer's BA-NY retail service.

² See NYPSC Evaluation—Reply, Exhibit 4, p. 6.

NYCY9907093 (10 minutes late)
NYCY9907499 (10 minutes late)
NYCY9907688 (6 minutes late)
NYCY9908128 (5 minutes late)

15. At paragraph 14, AT&T claims that my analysis, “turn[s] the carrier-to-carrier reporting requirements on their head” by changing orders scored by BA-NY as misses to met. This statement is not correct. In all of the analyses, I changed only two BA-NY-scored misses to met: 1) NYCY9908340 and, 2) NYCY9909123. In both cases, information supplied by either AT&T or BA-NY required the scoring change. For example, I changed the scoring of NYCY9908340 from a miss to a met because documentation provided by AT&T clearly stated that the cut was made on time and that it worked. Although BA-NY’s log was unclear as to timing, AT&T had multiple opportunities to document that this cut was late, and did not do so. Similarly, while BA-NY did not initially score NYCY9909123 as timely, my review indicated that the cut was, in fact, performed on time.
16. At ¶15, AT&T criticizes the August data reconciliation, stating, “At no point . . . did anyone from the NYPSC staff indicated to me that AT&T had failed to submit the necessary information.” This statement is incorrect. In fact, for the August reconciliation, AT&T filed data on only 624 orders that it believed were completed in August (see Attachment 1 to AT&T Meek Affidavit (October 19, 1999)). After discussions with BA-NY and Staff made clear that AT&T had failed to provide any information on more than 8% of its orders, AT&T provided information regarding the additional orders. On October 27, 1999 I issued via e-mail a follow-up request to both BA-NY and AT&T, which provided AT&T with a second opportunity to file

supplemental information (*See* Rubino e-mail memo to Delaney, Maguire, Diaz, and Meek dated October 27, 1999, attached).

17. At ¶20, AT&T charges, with no apparent basis, that I generally limited my review to looking at AT&T log information. I reviewed AT&T log information because this was the documentation provided by AT&T to support its allegations of outages. However, where other information was submitted by either BA-NY or AT&T in the context of a prior reconciliation, I also considered this information.
18. In ¶21, AT&T states that a prior reconciliation had established that on 52 of 101 orders, the loop did not work and that the loss of service was the result of a BA-NY provisioning error or problem. As noted above, prior reconciliations addressed only whether the hot cut was met or missed for metric purposes. As we indicated in our initial evaluation, I performed a limited analysis of outages due to hot cuts. However, because the data I reviewed in those reconciliations did not indicate widespread outages due to provisioning failures, I did not perform a detailed analysis of whether outages were caused by AT&T or BA. While some metric misses are obviously BA-NY provisioning errors, such as early cuts, others were not necessarily related to the actual hot cut. However, these other metric failures would still be scored as misses (e.g., late cuts) or as I-codes (e.g., static, noise, or cross-talk).
19. I will discuss the allegations contained in ¶24 of the AT&T Affidavit in conjunction with my review of each of the individual hot cut order numbers, but the information contained in footnotes 13 and 14 is generally incorrect, as follows.
20. Footnote 13 states that my lack of determination of responsibility for I-codes is inconsistent with the statements in NYPSC's February 16, 1999 Carrier-to-Carrier

order about the importance of tracking responsibility for I-codes. For the July and August reconciliations, I did not determine whether BA-NY or AT&T was responsible for I-codes because, as I have repeatedly explained, those reconciliations dealt with metric *PR 4-06 - % On Time Performance--Hot Cut*, and did not address metric *PR 6-02- % Installation Troubles within 7 days--Hot Cut*. If I had been performing a complete audit of metric PR 6-02, I would have analyzed which entity was responsible for the I-code, similar to the exercise contained in the outage report (NYPSC Evaluation—Reply, Exhibits 5 and 6).

21. Footnote 14 asserts that BA-NY's scoring of an I-code is an admission of responsibility. This is correct. BA-NY scores an I-code only when the disposition code of a trouble reported indicates that the trouble was on the BA-NY network.³ In contrast, my reconciliation scoring of an I-code does not necessarily mean BA-NY was at fault; the trouble on the line could be the result of either CLEC or BA-NY problems. Neither BA-NY nor AT&T provided the disposition codes of most of the troubles at issue here. Nevertheless, even in cases where BA-NY "accepts responsibility" by recording an I-code on a line, BA-NY's affidavits and metric reports do not indicate whether these I-codes were related to a hot cut provisioning problem. For example, issues that require outside plant work, such as noise, will be properly recorded as I-codes but may not be related to the hot cut activity.
22. The AT&T Affidavit alleges several categories of errors in my analysis. Specific orders are addressed individually in my attachment, but general comments about the categories of error claimed by AT&T follow.

³ When a trouble is closed, disposition codes are entered by BA-NY technicians to indicate where the problem was found. Generally, disposition codes indicate whether the problem was in the central office,

Category	AT&T Definition and Staff Response
A	<p>Staff previously determined explicitly that AT&T's documented customer service outage resulted from BA-NY's hot cut loop provisioning error.</p> <p><i>Staff Response:</i> I dealt with category A on an order-by-order basis.</p>
B	<p>BA-NY previously acknowledged explicitly that AT&T's documented customer service outage resulted from BA-NY's hot cut loop provisioning error.</p> <p><i>Staff Response:</i> Nowhere in the record, to my knowledge, has BA-NY "acknowledged explicitly" that an outage resulted from a hot cut provisioning error, nor has AT&T provided any cite for such an acknowledgement.</p>
C	<p>Staff previously determined to treat AT&T's documented customer service outage as an I-code.</p> <p><i>Staff Response:</i> As discussed earlier, a notation of I-code was intended to indicate only that a trouble was reported on the line after a hot cut. Such notations were not intended to indicate that the error was related to the performance of the hot cut or that BA-NY was at fault.</p>
D	<p>BA-NY previously determined to treat AT&T's documented customer service outage as an I-code.</p> <p><i>Staff Response:</i> BA-NY treatment of a line as an I-code confirms that the trouble was on the BA-NY network, but not that the trouble was hot cut-related.</p>
E	<p>AT&T's documented customer service outage could not have occurred except as a result of BA-NY's attempted hot cut to AT&T.</p> <p><i>Staff Response:</i> AT&T's statement is unsupported and conclusory. Troubles can result from a number of factors, including problems on either the BA-NY or the AT&T network.</p>
F	<p>Staff did not review all available information concerning AT&T's documented customer service outage.</p> <p><i>Staff Response:</i> I reviewed all information provided by BA-NY and AT&T, as detailed for the individual orders.</p>

outside plant, customer equipment; or whether there was no trouble found on the line.

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G BA-NY defective outside facility problem caused the customer service outage.

Staff Response: Defective outside facility problems can only be related to the hot cut if the customer was taken off an Integrated Digital Loop Carrier (IDLC) and placed on alternate facilities. In all other cases, the customer has the same outside facilities before and after the hot cut. Therefore, a defect was present that only became known at the time of the hot cut.

H BA-NY reported no trouble found condition when it investigated outage, or did not specify nature of its acknowledged repair, yet service was restored only after AT&T opened trouble tickets with BA-NY and without change to AT&T's network.

Staff Response: Troubles closed as "trouble not found" generally involve multiple iterations of testing by both BA and AT&T technicians. While it is likely that the trouble did not "clear itself", neither Staff nor AT&T has any way to determine what actually happened. The trouble could have resided in AT&T facilities, BA-NY facilities, or customer equipment.

23. In conclusion, after reviewing in detail each allegation by AT&T, as documented in the attached notes and conclusions, I reiterate the conclusions reached based on the reconciliations analyzed in my November 5, 1999 Affidavit, except insofar as further review indicates that different scoring is appropriate, as explained above.

Dated this 1st day of December, 1999

